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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-114

A. T. TSOUMAS, Director, Illinois Department of Financial Institutions,

Petitioner.

vs.

GLEN ELLYN SAVINGS AND LOAN ASSOCIATION, THE MILLIKEN NATIONAL BANK OF DECATUR and THE FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF WAUKEGAN,

Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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SCHNEPP & BARNES PRINTERS, INC., SPRINGFIELD, ILL.

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In this case the Supreme Court of Illinois has not (1) decided a federal question of substance not heretofore determined by the United States Supreme Court, nor (2) decided a federal question in a way which is not in accord with the prior applicable decisions of the United States Supreme Court.

The State of Illinois has elected to rest its Petition upon the issue of whether there is an unambiguous congressional

mandate that federal law shall apply exclusively to the regulation of federal financial institutions in the area of mortgage disclosure. In presenting this issue it relys upon the following line of cases: *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947); *Rice v. Board of Trade*, 331 U.S. 247 (1947); *Florida Avocado Growers v. Paul*, 373 U.S. 132 (1963); and *De Canas v. Bica*, 424 U.S. 351 (1976). In *Santa Fe Elevator* the Court held that an explicit grant of "exclusive" regulatory authority to the Secretary of Agriculture preempted state regulation. In the *Board of Trade* case such an exclusivity provision was absent. While the Court upheld the validity of the state action in the latter case, it clearly did not do so simply because of the absence of an exclusivity provision to show the "clear and manifest" intent of Congress. This is apparent if examination is made of the manner in which the test emuniciated in these two cases is applied.

In *Florida Avocado Growers v. Paul*, 373 U.S. 132 (1963), the Court cited the *Santa Fe Elevator* and *Board of Trade* cases approvingly, 373 U.S. at 146, but then proceeded to an examination of the comprehensiveness of the federal statute in question and then its legislative history, as follows:

> "A third factor which strongly suggests that Congress did not mandate uniformity for each marketing order arises from the legislative history. The provisions concerning the limited duration and local application of marketing agreements received much attention from both House and Senate Committees reporting on the bill . . . .
>
> The Committee Reports also discussed § 10(i), 7 USC § 610(i), which authorized federal-state cooperation in the administration of the program, and cautioned significantly:
>
> 'Notwithstanding the authorization of cooperation contained in this section, there is nothing in it to permit or require the Federal Government to invade the field of the States, for the limitations of the act and the Constitution forbid federal regulation in that field, and this provision does not indicate the contrary. Nor is there anything in the provision to force the States to cooperate. Each sovereignty operates in its own sphere but can exert its authority in conformity rather than in conflict with that of the other.' HR Rep. No. 1241, 74th Cong., 1st Sess 22-23; S Rep. No. 1011, 74th Cong., 1st Sess 15" (373 U.S. at 149-150.)

Thus, on the question of congressional intention to preempt, the legislative history of the federal statute is of material significance.

The Supreme Court's decision in *De Canas v. Bica*, 424 U.S. 351 (1976), rests upon exactly the same rationale.

> "Of course, even state regulation designed to protect vital state interests must give way to paramount federal legislation. But we will not presume that Congress, in enacting the INA, intended to oust state authority to regulate the employment relationship covered by § 2805(a) in a manner consistent with pertinent federal laws. Only a demonstration that complete ouster of state power — including state power to promulgate laws not in conflict with federal law — was "the clear and manifest purpose of Congress" would justify that conclusion. *Florida Lime & Avocado Growers v. Paul*, supra, at 146, 10 L. Ed 2d 248, 83 S. Ct. 1210, quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 91 L. Ed. 1447, 67 S. Ct. 1146 (1947). Respondents have not made that demonstration. *They fail to point out, and an independent review does not reveal, any specific indication in either the wording or the legislative history* of the INA that Congress intended to preclude even harmonious state regulation touching on aliens in general, or the employment of illegal aliens in particular. (424 U.S. at 357-358.) (Emphasis supplied.)

In *De Canas* the Court found the state statute not to be preempted and thereby reversed the Court of Appeals. The Court distinguished *Guss v. Utah Labor Board,* 353 U.S. 1 (1957) and *San Diego Unions v. Garmon,* 353 U.S. 26 (1957) which were relied upon by the Court below in finding preemption as follows:

> "Reliance upon those decisions was misplaced. Those decisions involved labor management disputes over conduct expressly committed to the National Labor Relations Board to regulate, but concerning which the Board had declined to assert jurisdiction; the Board had not ceded jurisdiction of such regulation to the States, as it was empowered to do . . . .
>
> The Court held in that circumstance that '[t]o leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law. *San Diego Unions v. Garmon,* 359 U.S. at 244, 3 L. Ed. 2d 775, 79 S. Ct. 773. Guss and Garmon recognize, therefore, *that in areas that Congress decides require national uniformity of regulation, Congress may exercise power to exclude any state regulation,* even if harmonious. But nothing remotely resembling the NLRA scheme is to be found in the INA." (424 U.S. at 59, n. 7) (Emphasis supplied.)

Thus, the *De Canas* Court recognized the paramount importance of deciding on a statute-by-statute basis whether or not the issue under adjudication fell into an area which Congress had ". . . decide[d] required [d] national uniformity of regulation. . . ."

Section 306 of The Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2805) contains an unambiguous Congressional mandate as to the exclusivity of federal control with

respect to public disclosure and recordkeeping by federal depository institutions. That section states:

> "Relation To State Laws
>
> "SEC. 306. (a) This title does not annul, alter, or affect, or exempt any State chartered depository institution subject to the provisions of this title from complying with the laws of any State or subdivision thereof with respect to public disclosure and recordkeeping by depositor (sic) institutions, except to the extent of the inconsistency. The Board (the Fed) is authorized to determine whether such inconsistencies exist. The Board may not determine that any such law is inconsistent with any provision of this title if the Board determines that such law requires the maintenance of records with greater geographic or other detail than is required under this title, or that such law otherwise provides greater disclosure than is required under this title.
>
> "(b) The Board may by regulation exempt from the requirements of this title any State chartered depository institution within any State or subdivision thereof if it determines that, under the law of such State or subdivision, that institution is subject to requirements substantially similar to those imposed under this title, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection shall be enforced under - -
>
> (1) Section 8 of the Federal Deposit Insurance Act in the case of national banks, by the Comptroller of the Currency (sic); and
>
> (2) Section 5(d) of the Home Owners' Loan Act of 1933 in the case of any institution subject to that provision, by the Federal Home Loan Bank Board."

The section states, with respect to State-chartered depository institutions only, that the federal law does not

annul any State law, alter any State law, affect any State law, or exempt any State-chartered depository institution from complying with any State law, except to the extent that the State law is inconsistent with any provision of the Federal law.

It makes no such statement with respect to Federally-chartered depository institutions, and its silence on this issue together with the legislative history, indicates a mandate on the part of Congress to pre-empt the regulation of federal institutions in the area of mortgage disclosure.

The pertinent legislative history of the Federal Act on this issue is significant. Both the Senate bill (S. 1281, 94th Congress, 1st Session, 1975) and the House bill (H.R. 10024, 94th Congress, 1st Session, 1975) contained "Relation to State Laws" sections. Section 306 of H.R. 10024 initially stated:

> "RELATION TO STATE LAWS
>
> "SEC. 306. (a) This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with the laws of any State or subdivision thereof with respect to public disclosure and recordkeeping by depositor (sic) institutions, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any such law is inconsistent with any provision of this title if the Board determines that such law requires the maintenance of records with greater geographic or other detail than is required under this title, or that such law otherwise provides greater disclosure than is required under this title."
>
> "(b) The Board may by regulation exempt from the requirements of this Act any depository institution within any State or subdivision thereof if it determines that, under the law of such State or subdivision, that institution is subject to requirements substantially similar to those imposed under this Act, and that such law contains adequate provisions for enforcement."

Some confusion existed as to whether the language of the respective "Relation to State Laws" sections of the Senate and House bills could be construed to require Federal associations to comply with disclosure and recordkeeping requirements imposed by State law.

Action was taken to remove this confusion on the House Floor on October 31, 1975, when H.R. 10024 was under consideration. At that time, Representative Stephens (D-Ga.) offered an amendment to section 306 of H.R. 10024 which would substitute the words "state chartered depository institution" for the word "person" where it appears in section 306(a), and add the words "state chartered" before the words "depository institution" where they appear in section 306(b). Upon introducing this amendment, Representative Stephens made the following remarks which appear on p. H10517 of the Congressional Record for October 31, 1975:

> "MR. STEPHENS. . . .
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> "This amendment really and truly is nothing but an attempt to put into the law exactly what was disclosed by the colloquy between the chairman of this subcommittee and the gentleman from Illinois (Mr. Annunzio). . . .
>
> "So far as these federally controlled savings and loan associations are concerned, they have always been regulated by the Federal Home Bank Board. The Federal Home Loan Bank Board in considering the language of the statute, says it is not clear whether that is to be continued or not. This is what the Board has asked to be done, and this is why I offered the

amendment. I will read from a letter of the Federal Home Loan Bank Board as follows:

'We are concerned that section 306 of Title III could be construed to require Federal savings and loan associations to comply with public disclosure and recordkeeping requirements imposed by State law. As you know, this provision is identical, except for certain technical amendments to section 6 of S. 1281 approved by the Senate on September 4, 1975. Although it is not clear from a reading of section 306 that the section would subject Federal institutions to State Law disclosure requirements, such an inference has been drawn by language in the House Banking Committee report . . . The report states: "H.R. 10024 makes it clear that Federal institutions must comply with State law and regulations".'

"That was not what was understood from the hearing as the intent of Committee.

"Mr. Chairman, this would clarify that. That is all it does.

"Let me point this out: My amendment does not change existing law at all. It merely confirms that we are not intending to change existing law by the language that is in the statute or in the report.

"Mr. Chairman, I urge the support of this amendment.

"MR. ROUSSELOT. Mr. Chairman, will the gentleman yield?"

"MR. STEPHENS. I yield to the gentleman from California."

"MR. ROUSSELOT. Mr. Chairman, we believe this is a good and reasonable amendment, and we support it."

The amendment was adopted. On October 31, 1975, H.R. 10024, as amended, was approved by the House.

Finally, the differences between Section 6 of the Senate bill and Section 306 of the House bill were resolved in the Joint Conference by the Senate and House Conference adopting the House language. The Conference Report No. 94-553, dated December 12, 1975, states:

"RELATION TO STATE LAWS

"The Senate bill provided that this legislation does not exempt any person otherwise subject to state or local laws regarding recordkeeping and disclosure by depository institutions except to the extent of inconsistency with the provisions of this Act, and then only to the extent of the inconsistency, with the provision that the Board shall determine whether such inconsistencies exist. The Senate's intent was to subject all depository institutions in a jurisdiction to the same mortgage disclosure law, whether State or Federal, depending on which offered a greater degree of disclosure of mortgage information. . . .

"The Senate conferees regard the House provision concerning Federal pre-emption as an exception to the pre-emption provisions of other consumer finance laws, including the Trust in Lending and the Fair Credit Billing Acts, which contain provisions similar to the Senate provisions of S. 1281.

"In the case of mortgage disclosure, however, the conferees on the part of the House strongly believe that subjecting a Federally chartered institution to state law would threaten the dual banking system.

"With the understanding that this provision goes only to the narrow area of geographical disclosure of mortgage lending statistics, the Senate conferees agreed to the House provision, which is included in the conference report."

The Home Mortgage Disclosure Act of 1975 was signed into law by the President on December 31, 1975 (Public Law 94-200).

CONCLUSION

By Petitioner's own adopted standard and in accord with the reasoning of the cases cited by Petitioner, the Illinois Supreme Court has confirmed the fact that in this case there has been an unambiguous congressional mandate that federal financial institutions be controlled only by federal law in the area of mortgage foreclosure regulation.

Respectfully submitted,

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